

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs July 28, 2009

JAMIE LYNN MIDDLEBROOK v. STATE OF TENNESSEE

Appeal from the Criminal Court for Knox County
No. 88828 Richard R. Baumgartner, Judge

No. E2008-02392-CCA-R3-HC - Filed December 11, 2009

The Petitioner, Jamie Lynn Middlebrook, appeals the Criminal Court for Knox County's dismissal of her petition for habeas corpus relief, in which she contended that her sentences for robbery, a Class C felony, had expired. We affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

JOSEPH M. TIPTON, P.J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and D. KELLY THOMAS, JR., JJ., joined.

J. Liddell Kirk, Knoxville, Tennessee, for the appellant, Jamie Lynn Middlebrook.

Robert E. Cooper, Jr., Attorney General and Reporter; Cameron L. Hyder, Assistant Attorney General; Randall E. Nichols, District Attorney General; and William Hood, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

The record reflects that the Petitioner pled guilty in 1993 to five counts of robbery, a Class C felony, for which she received an effective fourteen-year sentence. The trial court suspended her sentence and placed her on supervised probation for twenty years. The Petitioner's probation was revoked in 1997, and she was sentenced to the Department of Correction to serve the balance of her sentence. The Petitioner received 214 days of jail credit against the effective fourteen-year sentence. The Petitioner did not appeal the revocation of her probation.

In 2008, the Petitioner filed a petition for writ of habeas corpus in which she listed three grounds as a basis for relief. First, the Petitioner contended that she had not received five years of "jail credit" for her "house arrest" prior to the revocation of her probation and that with the application of these credits, her sentence had expired. Second, the Petitioner argued that Mark Luttrell Correctional Center had "done a lot of horrible things to her" and that she had filed a civil suit. Third, in a variation of her first argument, the Petitioner claimed that the trial court should give

her credit for two years of “house arrest” and 2,500 hours of community service and that it should suspend the remainder of her sentence.

At a hearing on the matter, the Petitioner contended that the conditions of her probation had been so restrictive as to constitute the custody equivalent to incarceration and that she should be given credit for five years against her sentence. The trial court dismissed the Petitioner’s petition for habeas corpus relief. It found that the terms of the Petitioner’s probation, which required her to observe a 6:00 p.m. to 6:00 a.m. curfew and to perform community service, were not the equivalent of incarceration and would not serve as credits against her jail sentence. The court found that a petition for writ of habeas corpus was not an appropriate forum for the Petitioner’s challenges to the conditions at the correctional facility or to the length of her sentences. It further found that the Petitioner’s sentences had not expired.

The Petitioner appeals the dismissal of her petition for writ of habeas corpus. She asks this court to remand her case for an evidentiary hearing to determine whether the terms of her supervised probation constitute custody for purposes of awarding credit for jail time served. The Petitioner states, “If she had been credited the time she was requesting, then her sentence would be near completion.” The State contends that the Petitioner is not entitled to habeas corpus relief because she failed to attach the judgments of conviction to her petition or to give a sufficient reason for this failure, filed the petition in the incorrect court, and challenges to jail credits are not an appropriate basis for habeas corpus relief.

The determination of whether habeas corpus relief should be granted is a question of law which we review de novo on appeal. Hart v. State, 21 S.W.3d 901, 903 (Tenn. 2001). Habeas corpus relief will be granted when the petitioner can show that a judgment is void, not merely voidable. Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999). To this end, a writ of habeas corpus is granted only “when it appears upon the face of the judgment or the record of the proceedings upon which the judgment is rendered that a court lacked jurisdiction or authority to sentence a defendant or that the sentence has expired.” Stephenson v. Carlton, 28 S.W.3d 910, 911 (Tenn. 2000) (citing Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993)). The burden is on the petitioner to establish by a preponderance of the evidence that the judgment is void or that a sentence has expired. See Wyatt v. State, 24 S.W.3d 319, 322 (Tenn. 2000); State ex rel. Kuntz v. Bomar, 500, 381 S.W.2d 290, 291-92 (1964). If the petitioner carries this burden, she is entitled to immediate release relative to that judgment. Passarella v. State, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994). However, the trial court may dismiss a petition for writ of habeas corpus without an evidentiary hearing and without appointing a lawyer when the petition does not state a cognizable claim for relief. Hickman v. State, 153 S.W.3d 16, 20 (Tenn. 2004); State ex rel. Edmondson v. Henderson, 421 S.W.2d 635, 636-37 (1967); see also T.C.A. § 29-21-109 (2000 & Supp. 2008).

As the State claims, the Petitioner has failed to include in support of her petition a copy of the judgments by which she is being restrained and has offered no explanation for her failure to do so. See T.C.A. § 29-21-107(b)(2). Similarly, according to the petition, the Petitioner is presently incarcerated in the Mark Luttrell Correctional Center in Memphis, Tennessee. The Petitioner has provided no reason for filing her petition in a court other than the court located closest in point of distance to her. See T.C.A. § 29-21-105. Regarding the State’s procedural default arguments, it is

correct that, in general, a petitioner is required to attach a copy of the judgment to her petition. T.C.A. § 29-21-107(b)(2). The statute provides that if a copy is not attached, “a satisfactory reason [must be] given for its absence.” Id. However, we note that the trial court had the discretion to consider the merits of the petition, even if the documents were not attached. See Hickman v. State, 153 S.W.3d 16, 21(Tenn. 2004). Although the trial court dismissed the Petitioner’s petition, it addressed each of the Petitioner’s grounds for relief and found that a habeas corpus action was not the appropriate remedy.

We agree that a petition for writ of habeas corpus is not the appropriate forum in which to address the Petitioner’s claims of inadequate living conditions at the correctional facility. See T.C.A. § 29-21-101(a); Stephenson, 28 S.W.3d at 911 (a writ of habeas corpus will issue only when the judgment is void or the sentence has expired). Next, the Petitioner argues that the trial court did not apply credit for the time she served on “house arrest” and on “enhanced” probation. See T.C.A. § 40-23-101. At the hearing on the petition for writ of habeas corpus, defense counsel argued:

[The Petitioner] wants the Court to consider during that period of time, given the conditions she was serving in probation, given the restrictions that were placed on her, that she was effectively in custody for that period of time, and for the Court to consider that, and consider her sentence. If the Court were to consider the credits that she would have earned, and her release eligibility date, to consider her sentence expired or in the alternative to modify the judgment to give her an additional five years credit on the sentence that she has currently.

Probation is a less restrictive punishment than incarceration, and the time a defendant spends on probation does not count toward completion of the sentence unless the defendant completes the entire term of probation. State v. Hunter, 1 S.W.3d 653, 658 (Tenn. 1999); State v. Taylor, 922 S.W.2d 941, 945 (Tenn. 1999). The Petitioner states in her brief that her fourteen-year sentence was suspended and that she was placed on intensive supervised probation for twenty years. The Petitioner is mistaken in her claims that “house arrest” and serving 2,500 hours of community service are equivalent to incarceration. In addition, the Defendant did not complete her term of probation because she violated probation in 1997, fifteen years before it was scheduled to terminate.

Finally, the Petitioner was sentenced to an effective fourteen years in the Department of Correction. Her sentence was suspended. When the Petitioner violated probation and the trial court revoked the suspension of the sentence, the sentence of fourteen years was reinstated. See T.C.A. §§ 40-35-310 (upon revocation of suspension of sentence, “the original judgment . . . shall be in full force and effect from the date of the revocation of the suspension . . .”). The record reflects the Petitioner’s suspended sentence was revoked on September 2, 1997. Even with the application of 214 days of jail credit, the Petitioner’s sentence would not expire until February 2010. For all of these reasons, we conclude that the trial court properly dismissed the petition.

In consideration of the foregoing and the record as a whole, we affirm the judgment of the trial court.

JOSEPH M. TIPTON, PRESIDING JUDGE